

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELISSA LYNCH

Claimant

VS.

WESTWOOD MANOR

Respondent

AND

AMERICAN HOME ASSURANCE

Insurance Carrier

Docket No. 1,024,724

ORDER

Respondent and its insurance carrier (respondent) request review of the October 27, 2005 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

The ALJ denied claimant's request for temporary total disability benefits but, pursuant to respondent's agreement to provide medical treatment, the ALJ's preliminary hearing Order included a designation of Dr. Amundson to serve as the treating physician until further order.

The respondent and its insurance carrier (respondent) requests that the Board reverse the ALJ's Order as they contend the ALJ exceeded his jurisdiction in issuing an order designating a treating physician when respondent had voluntarily provided such care and when claimant failed to include that request in his 7 day letter of intent.

At this time no brief has been filed by the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At the preliminary hearing, the ALJ had an off-the-record conversation with counsel for both parties. When the record was opened, the ALJ began as follows:

JUDGE AVERY: Okay, counsel, we had discussions off the record. The Claimant is seeking temporary total disability from October 17, '05 until further Order. Originally the Claimant was seeking treatment with Dr. Amundson. And Respondent has agreed to provide the treatment and is providing that treatment, and the treatment with Dr. Freeman. And the Respondent has an appointment set up for the Claimant to provide psychological treatment. So those two issues have been resolved. . . ¹

The parties went on to litigate claimant's request for temporary total disability compensation.

At the conclusion of the preliminary hearing, an Order was issued that provided, in part, as follows:

Medical treatment is hereby granted and ordered paid by respondent on claimant's behalf with Dr. Amundson until further order.²

Respondent maintains the ALJ had no authority to designate Dr. Amundson as the treating physician. Respondent contends it had *voluntarily* agreed to provide his services and at that point, there was no justiciable controversy for the ALJ to address. And by designating Dr. Amundson as the treating physician until further order, the ALJ arguably compelled respondent to pay for his care regardless of its causal connection to the compensable injury. Respondent also suggests that claimant's 7 day notice of intent letter did not make medical treatment an issue and in fact, recognized that treatment was being rendered.

The Board must first address whether it has jurisdiction to review this preliminary hearing Order. First, the Board finds the issue raised by the respondent is not one of the five issues enumerated in K.S.A. 44-534a. However, respondent argues that the ALJ did not have jurisdiction to appoint Dr. Amundson as the treating physician 1) because respondent had already *agreed* to provide Dr. Amundson's services to claimant, and 2) because claimant failed to include a request for treatment and designation of authorized

¹ P.H. Trans. at 4.

² ALJ Order (Oct. 28, 2005).

treater within his 7 day demand notice. This contention invokes the Board's jurisdiction under K.S.A. 44-551. Thus, the Board has the authority to consider the narrow issue of whether, in its judgment, the ALJ exceeded his jurisdiction in designating Dr. Amundson as the treating physician and ordering respondent to continue to pay for his services until further order.

After considering the respondent's arguments, the Board finds that the ALJ's preliminary hearing Order designating Dr. Amundson as the treating physician should be reversed and the Order set aside. When the ALJ opened the record, he announced the parties had resolved the issue of medical treatment. While his Order may have only been intended to memorialize the parties' agreement, it did so inaccurately, at least according to respondent. In any event, the ALJ had no authority to make any such determination as the parties had agreed that respondent would provide treatment, and there was no issue being presented to the court regarding medical treatment. Thus, the ALJ was without any jurisdiction to decide such an issue or make any orders on that issue. Accordingly, that portion of the Order is reversed.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated October 28, 2005, is reversed in part, eliminating any reference to Dr. Amundson as the treating physician. The balance of the Order remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of December, 2005.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Matthew S. Crowley, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director